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IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

11 UNITED STATES OF AMERICA,

12 Plaintiff,

13 v.

14 JASON CELES,

15 Defendant.

CASE NO. 1:20-CR-00056-NONE-SKO

STIPULATION REGARDING EXCLUDABLE  
TIME PERIODS UNDER SPEEDY TRIAL ACT;  
FINDINGS AND ORDER

DATE: November 18, 2020

TIME: 1:00 p.m.

COURT: Hon. Sheila K. Oberto

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17 This case was previously set for a status conference on November 16, 2020. By order of the  
18 Court, the date was moved to November 18, 2020. By stipulation, the parties now move to continue the  
19 status conference to January 6, 2021, and to exclude time between November 16, 2020 and January 6,  
20 2021.

21 On April 17, 2020, this Court issued General Order 617, which suspends all jury trials in the  
22 Eastern District of California scheduled to commence before June 15, 2020, and allows district judges to  
23 continue all criminal matters to a date after June 1. This and previous General Orders were entered to  
24 address public health concerns related to COVID-19.

25 Although the General Orders address the district-wide health concern, the Supreme Court has  
26 emphasized that the Speedy Trial Act's end-of-justice provision "counteract[s] substantive  
27 openendedness with procedural strictness," "demand[ing] on-the-record findings" in a particular case.  
28 *Zedner v. United States*, 547 U.S. 489, 509 (2006). "[W]ithout on-the-record findings, there can be no

exclusion under” § 3161(h)(7)(A). *Id.* at 507. Moreover, any such failure cannot be harmless. *Id.* at 509; see also *United States v. Ramirez-Cortez*, 213 F.3d 1149, 1153 (9th Cir. 2000) (explaining that a judge ordering an ends-of-justice continuance must set forth explicit findings on the record “either orally or in writing”).

Based on the plain text of the Speedy Trial Act—which *Zedner* emphasizes as both mandatory and inexcusable—General Orders 611, 612, and 617 require specific supplementation. Ends-of-justice continuances are excludable only if “the judge granted such continuance on the basis of his findings that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial.” 18 U.S.C. § 3161(h)(7)(A). Moreover, no such period is excludable unless “the court sets forth, in the record of the case, either orally or in writing, its reason or finding that the ends of justice served by the granting of such continuance outweigh the best interests of the public and the defendant in a speedy trial.” *Id.*

The General Orders exclude delay in the “ends of justice.” 18 U.S.C. § 3161(h)(7) (Local Code T4). Although the Speedy Trial Act does not directly address continuances stemming from pandemics, natural disasters, or other emergencies, this Court has discretion to order a continuance in such circumstances. For example, the Ninth Circuit affirmed a two-week ends-of-justice continuance following Mt. St. Helens’ eruption. *Furlow v. United States*, 644 F.2d 764 (9th Cir. 1981). The court recognized that the eruption made it impossible for the trial to proceed. *Id.* at 767-68; *see also United States v. Correa*, 182 F. Supp. 326, 329 (S.D.N.Y. 2001) (citing *Furlow* to exclude time following the September 11, 2001 terrorist attacks and the resultant public emergency). The coronavirus is posing a similar, albeit more enduring, barrier to the prompt proceedings mandated by the statutory rules.

In light of the societal context created by the foregoing, this Court should consider the following case-specific facts in finding excludable delay appropriate in this particular case under the ends-of-justice exception, § 3161(h)(7) (Local Code T4).<sup>1</sup> If continued, this Court should designate a new date for the status conference. *United States v. Lewis*, 611 F.3d 1172, 1176 (9th Cir. 2010) (noting any pretrial continuance must be “specifically limited in time”).

<sup>1</sup> The parties note that General Order 612 acknowledges that a district judge may make “additional findings to support the exclusion” at the judge’s discretion. General Order 612, ¶ 5 (E.D. Cal. March 18, 2020).

## STIPULATION

Plaintiff United States of America, by and through its counsel of record, and defendant, by and through defendant's counsel of record, hereby stipulate as follows:

1. By previous order, this matter was set for status on November 18, 2020.
2. By this stipulation, defendant now moves to continue the status conference until January 1, and to exclude time between November 16, 2021, and January 6, 2021, under Local Code T4.
3. The parties agree and stipulate, and request that the Court find the following:
  - a) The government has represented that the discovery associated with this case includes investigative reports and related documents, body camera footage, criminal history reports, and court documents. All of this discovery has been either produced directly to counsel and/or made available for inspection and copying.
  - b) Counsel for defendant desires additional time to review discovery provided by the government, conduct additional investigation regarding the charges, consult with his client, and discuss potential resolution with the government. Defense counsel is also working on preparing a motion to suppress, and needs additional time to brief and argue the issue.
  - c) Counsel for defendant believes that failure to grant the above-requested continuance would deny him/her the reasonable time necessary for effective preparation, taking into account the exercise of due diligence.
  - d) The government does not object to the continuance.
  - e) Based on the above-stated findings, the ends of justice served by continuing the case as requested outweigh the interest of the public and the defendant in a trial within the original date prescribed by the Speedy Trial Act.
  - f) For the purpose of computing time under the Speedy Trial Act, 18 U.S.C. § 3161, et seq., within which trial must commence, the time period of November 18, 2020 to January 6, 2021, inclusive, is deemed excludable pursuant to 18 U.S.C. § 3161(h)(7)(A), B(iv) [Local Code T4] because it results from a continuance granted by the Court at defendant's request on the basis of the Court's finding that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial.

4. Nothing in this stipulation and order shall preclude a finding that other provisions of the Speedy Trial Act dictate that additional time periods are excludable from the period within which a trial must commence.

## IT IS SO STIPULATED.

Dated: November 9, 2020

McGREGOR W. SCOTT  
United States Attorney

/s/ KATHERINE E. SCHUH  
KATHERINE E. SCHUH  
Assistant United States Attorney

Dated: November 9, 2020

/s/ DOUGLAS FOSTER  
DOUGLAS FOSTER  
Counsel for Defendant  
JASON CELES

## **FINDINGS AND ORDER**

IT IS SO ORDERED.

Dated: **November 10, 2020**

*[Signature]* Sheila K. Oberto

**UNITED STATES MAGISTRATE JUDGE**